



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/48780/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 12 January 2016**

**Decision & Reasons Promulgated
On 9 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

**L D P
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant in Person

For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of South Africa born on 2 October 1981. On 18 July 2014 he applied for leave to remain in the UK on the basis of his family and private life in the United Kingdom. The respondent refused his application in a letter dated 13 November 2014. In that letter the respondent concluded that the Appellant did not meet the requirements of Appendix FM section R-LTRPT of the Immigration Rules. The respondent concluded that he did not satisfy the requirements of the Rules with regard to eligibility and further that paragraph EX.1. did not apply. In consequence

the Respondent decided to refuse to vary his leave to remain and remove him under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The appellant appealed that decision to the First-tier Tribunal and First-tier Tribunal Judge Parkes in a decision promulgated on 16 July 2015 dismissed the appeal.
3. The appellant sought permission to appeal to the Upper Tribunal and permission was granted by Upper Tribunal Judge Martin on 2 November 2015 on the basis that it was arguable as asserted in the grounds for permission to appeal that the First-tier Judge had erred in his interpretation of paragraph E-ECPT.2.4.(a)(ii) and (b) as there was clear evidence before the judge that the appellant was having direct contact with his son.
4. The grounds for permission to appeal assert the following. It is said that the appellant met the requirements of the Immigration Rules. It is asserted that the First-tier Tribunal made a material error of law in that the First-tier Tribunal misdirected itself and applied a section of the Rules which was not appropriate. The appellant was required to demonstrate that he had access rights to the child and provide evidence that he was taking and intending to continue to take an active role in the child's upbringing.
5. It is said that at paragraph 12 of the First-tier Tribunal's decision the Judge found that the appellant was taking an active role in his son's life and this may increase. At paragraph 13 the Judge said that the appellant could rely on access rights by agreement with the other parent, there was such an agreement, and that the appellant had an intention to take part in his son's upbringing.
6. It is submitted on this basis and given the findings of the First-tier Tribunal that the appellant met the eligibility requirements of the Immigration Rules and it was not suggested or found that the appellant did not meet any other requirement of Appendix FM under the parent of a British child category. The First-tier Tribunal therefore erred in law and misdirected itself by suggesting that the appellant also had to satisfy the requirements of paragraph EX.1. There was no such requirement and therefore the appeal should have been allowed.
7. At the hearing Mr Kotas on behalf of the Secretary of State referred me to his intention to withdraw the Rule 24 response as set out in an email to the Upper Tribunal on 11 January 2016. In that he email said that the Secretary of State no longer opposed the appellant's appeal. Upper Tribunal Judge Kebede decided that the appeal should remain listed.
8. At the hearing the appellant attended without his representatives who had written to the Tribunal on 12 January 2016 stating that on the basis of the Secretary of State's stance and in the interests of expense they would not be attending the hearing on their client's instructions. Mr Kotas agreed on behalf of the Secretary of State that there was a material error of law in the First-tier Tribunal's decision and that the refusal letter did not put in issue the appellant's ability to satisfy the remaining eligibility requirements of the Rules. On the basis of the evidence in the appellant's

bundle he satisfied all the requirements of the Immigration Rules and consequently the appeal should be allowed outright.

9. In those circumstances and in the light of all of the evidence before me I find that there was a material error of law in the decision of the First-tier Tribunal for the following reasons.
10. In order to satisfy the requirements of section R-LTRPT.1.1. of Appendix FM of the Immigration Rules the appellant is required to demonstrate that he and the child are in the UK; he has made a valid application for limited leave to remain as a partner; he does not fall for refusal under "Suitability leave to remain" and that he meets all of the requirements of "Eligibility for leave to remain". In terms of the relationship requirements it is not in issue that the appellant's child is under the age of 18, is living in the UK and is a British citizen.
11. The requirements in issue in this appeal related to the appellant's ability to satisfy the requirements of E-LTRPT.2.4 (relationship requirements). It was the appellant's case that he had access rights to his child and that he had provided evidence that he was taking and intended to continue to take an active role in the child's upbringing and therefore satisfied the requirements of the section.
12. I find that the First-tier Tribunal misdirected itself in relation to the appellant's ability to satisfy those requirements. The First-tier Tribunal found at paragraphs 12 and 13 of the decision that the appellant was now taking an active role in his son's life and that this would increase or may increase. The First-tier Tribunal found at paragraph 13 that the appellant intended to take some part in his son's upbringing albeit that this had to be seen against his previous actions.
13. It was clear in any event on the evidence that the appellant had direct contact with his son and that he had been involved with Oxfordshire Family Mediation and there was a report before the First-tier Tribunal showing that there was an agreement for contact.
14. In the circumstances and in view of the fact that, according to the First-tier Tribunal's findings, the appellant was involved in his son's upbringing, the Tribunal then misdirected itself in dismissing the appeal. The refusal letter did not put any other provisions of the Rules in issue. The appellant was required to demonstrate in order to satisfy the eligibility requirements that in addition to the relationship requirement the immigration status requirement was met. The appellant had leave and so that was not in issue.
15. In the circumstances I set the decision of the First-tier Tribunal aside and re-make the decision. As stated, it is clear that on the basis of the findings of fact of the First-tier Tribunal the Appellant met the requirements of E-LTRPT.2.4. There was also clear evidence before the First-tier Tribunal that he met the financial requirements of E-LTRPT.4.1 in terms of maintenance and accommodation. The evidence in relation to that was to be found at pages 143 to 144 of his bundle before the First-tier Tribunal where his wage slips were appended demonstrating that he had a net income of

around £2,500 a month and his P60 and bank statements, which were at pages 127 to 141 of the appellant's bundle. In those circumstances paragraph EX.1 is not engaged.

16. Mr Kotas agreed that that evidence met the requirements of the Rules and I am satisfied that he would have been adequately maintained and accommodated in the UK. He had also submitted evidence in relation to the English language requirement.
17. In those circumstances the appellant meets all of the requirements of the Immigration Rules and the appeal is allowed. I therefore set aside the decision of the First-tier Tribunal and allow the appellant's appeal.

Notice of Decision

I find that there was an error of law in the decision of the First-tier. I set that decision aside and re-make it allowing the appeal under the Immigration Rules.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge L J Murray